

Date of Hearing: April 1, 2008

ASSEMBLY COMMITTEE ON JUDICIARY

Dave Jones, Chair

AB 3051 (Committee on Judiciary) – As Amended: March 24, 2008

SUBJECT: DEPENDENCY HEARINGS: CHILD PARTICIPATION

KEY ISSUE: SHOULD FOSTER CHILDREN BE PROVIDED WITH THE OPPORTUNITY TO ATTEND, AND PARTICIPATE IN, THEIR DEPENDENCY HEARINGS, WHERE CRITICAL, LIFE-CHANGING DECISIONS ARE MADE?

SYNOPSIS

This Committee bill helps ensure that children in foster care who so desire are able to attend and participate in their dependency court hearings. The bill stems from an in-depth investigatory series that ran in the San Jose Mercury News in February, which discovered, among other things, that children “whose interest are supposed to determine dependency case outcomes are often regularly excluded from the court process. Judicial officers issue life-altering rulings without ever seeing the children whose futures are being decided.” This bill seeks to help children who want to participate in their dependency hearings by (1) providing that children in attendance at these hearings can address the court and fully participate in the hearing, and (2) if a child 10 or older is not present, and has not been properly notified or given an opportunity to attend, requiring the court to continue the hearing to allow the child to be present, unless the court finds that it is in the best interest of the child not to do so. This bill strictly limits continuances to ensure hearings are held timely, and allows the court to issue any orders necessary to ensure that a child who wants to attend his or her hearing may do so.

This bill is consistent with recommendations from the Pew Commission on Children in Foster Care and draft recommendations of the Judicial Council Blue Ribbon Commission which find that both children and the judicial decisions benefit when children actively participate in their court hearings. It is also supported by the Children's Law Center of Los Angeles and the Youth Law Center. There is no known opposition.

SUMMARY: Provides children subject to dependency hearings a greater opportunity to attend and participate in their hearings. Specifically, this bill:

- 1) States the intent of the Legislature that:
 - a) All children who want to attend their juvenile court hearings be given the means and the opportunity to attend, and that these hearings be set to accommodate children's schedules;
 - b) Juvenile courts promote communication with, and the participation of, children in attendance at hearings of which they are the subject;
 - c) Children attending these hearing leave the hearing with a clear understanding of what decisions were made by the court and why;
 - d) The Administrative Office of the Courts help promote these objectives.

- 2) Requires the court to allow a child present at his or her juvenile court hearing who so desires to address the court and participate in the hearing.
- 3) Requires the court in a juvenile court hearing, where the child who is the subject of the hearing is 10 years of age or older and is not present at the hearing, to determine whether the minor, not only was properly notified, but also was given an opportunity to attend.
- 4) If the child was not properly notified or, if he or she wished to be present and was not given an opportunity to be present, requires the court to continue the hearing to allow the child to be present, unless the court finds that it is in the best interest of the child not to continue the hearing. Requires the court to continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. Permits the court to issue any orders necessary to ensure that the child has an opportunity to be present.
- 5) States that nothing in the legislation shall prevent or limit any child's right to attend or participate in the juvenile court hearing.

EXISTING LAW:

- 1) Requires that, among others, children 10 and over receive notice of dependency hearings, including the initial petition hearing, jurisdictional hearings and review hearings. (Welfare & Institutions Code Sections 290.1-295. All further statutory references are to that code unless otherwise stated.)
- 2) Allows a minor who is the subject of a juvenile court hearing and is entitled to notice of the hearing to be present at the hearing. Allows that minor to be represented at the hearing by counsel of his or her choice. If the minor is 10 or older and not present at the hearing, requires the court to determine whether the minor was properly notified of his or her right to attend the hearing. (Section 349.)
- 3) At the hearing to terminate parental rights or establish guardianship, requires the court to consider the wishes of the dependent child and to act in the child's best interests. Requires the court, if the child who is 10 and over is not present at the hearing, to determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present. (Section 366.26(h).)
- 4) States the policy of the State that all children in foster care have the right to attend court hearings and speak to the judge. (Section 16001.9.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This Committee bill stems from an in-depth investigatory series that ran in the San Jose Mercury News this past February. That year-long investigation discovered an under-funded dependency court system, with exceedingly high caseloads for judges and lawyers representing children and parents. As a result, children and their parents, the series discovered, are often treated with indifference. In particular, the series found: "Children whose interest are supposed to determine dependency case outcomes are often regularly excluded from the court process. Judicial officers issue life-altering rulings without ever seeing the children whose

futures are being decided." (Karen de Sá, Broken families, broken courts Day 1: How rushed justice fails our kids, *San Jose Mercury News* (Feb. 10, 2008).)

The series profiled Zairon Frazier, who lived in eight shelters and groups homes while in foster care. Despite being advised not to bother attending his hearings, he wanted to be there, so he traveled by bus and BART to be at his hearings. Unfortunately, there was no consideration of his schedule when his emancipation hearing -- the hearing that releases youth from supervision by the dependency court and from the foster care system -- was set on the same day as his high school final exams. He took his finals and missed the hearing. Two years later, after a reporter questioned why his emancipation hearing had not been rescheduled to accommodate his finals, court officials scheduled a mock emancipation hearing that he was able to attend. His former attorney acknowledged that the mock hearing had no legal significance, but she said "it had a lot of meaning to him, it really did. It was closure." (Karen de Sá, Broken families, broken courts: Big stakes, but little voice for kids, *San Jose Mercury News* (Feb. 12, 2008), quoting Kathy Siegel.)

Dependency court decisions dramatically impact children's lives. When children are removed from their homes due to abuse or neglect, they are placed under the jurisdiction of the dependency court. The dependency court gets to decide where they live, whom they live with, and whether they can see their family again. The court even decides whether to terminate parental rights and begin adoption proceedings. However, even though these hearings affect just about every aspect of a child's life, many children who want to participate in their dependency court hearings are shut out of the proceedings. Experts believe that foster children who have some say in the major decisions in their life are more apt to succeed than those who do not.

Current law only requires that children 10 and over be notified of court hearings. If the child is not present at a hearing, even the hearing to terminate parental rights, all the court has to do is see if the child received proper notice of the hearing. The court is not required to postpone the hearing and make sure the child can attend, even if the child was not properly notified. This can effectively shut children out of what may well be the most important decisions of their lives.

This bill helps to ensure that children who want to participate in their foster care hearings can do so. This bill helps children who want to participate in their dependency hearings in two ways. First, this bill clarifies that children in attendance at their dependency hearings can address the court and fully participate in the hearing. Second, if a child 10 or older is not present at a hearing, and has not been properly notified or given an opportunity to attend, this bill requires the court to continue the hearing to allow the child to be present, unless the court finds that it is in the best interest of the child not to do so. This bill strictly limits continuances to ensure hearings are held timely. To help ensure children are able to attend hearings, this bill also allows the court to issue any orders necessary to ensure that a child, who wants to attend his or her hearing, may do so.

This bill also states the intent of the Legislature that (1) all children who want to attend their juvenile court hearings be given the means and the opportunity to attend, and that these hearings be set to accommodate children's schedules; (2) juvenile courts promote communication with, and the participation of, children in attendance at hearings of which they are the subject; and (3) children attending these hearing leave the hearing with a clear understanding of what decisions were made by the court and why. Recognizing the very serious fiscal constraints that the State

is under, this bill does not mandate how these important objectives should be achieved, but does state the legislative intent that the Administrative Office of the Courts help promote them.

Studies have shown that there are many advantages to youth participation at dependency hearings: “Attending court benefits both the youth and the court. Youth have the opportunity to understand the process by seeing firsthand the court proceedings. They also develop a sense of control over the process when they actively participate. The court learns more about children than simply what is presented in reports.” (Andrea Khoury, Seen and Heard: Involving Children in Dependency Court, 25 *ABA Child Law Practice* Vol. 10, p. 150 (Dec. 2006).)

The latter point is reiterated by the Pew Commission on Children in Foster Care, which found that the quality of decisions is improved when judges can hear and see the key parties. The Commission found:

Children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges can see and hear from key parties. State court leaders should consider the impact of factors such as court room and waiting area accommodations, case scheduling, use of technology in the court room, and translation of written materials. These issues can make the process more accessible and meaningful for all participants, including children.

(Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, p. 42 (May, 2004).)

Draft recommendations from the Judicial Council California Blue Ribbon Commission on Foster Care provide further support for this bill. The Blue Ribbon Commission on Children in Foster Care (Commission) was appointed by Chief Justice Ronald George in 2006 to develop recommendations on how courts and their partner entities could improve child welfare and fairness outcomes. The Commission is chaired by Associate Justice Carlos Moreno and includes Assemblymembers Bass and Maze and Senator Steinberg as members.

The Commission's draft recommendations, issued on March 14, 2008, provide support for this bill. The Commission found:

The courts are often the unseen partners in child welfare, but every child and parent in the foster-care system knows it is the courts where critical decisions are made, including such life-changing questions as where and with whom a child will live. When dependency court judges and attorneys are not acquainted with “100 percent” of the child, when there is inadequate time or not enough information to make informed decisions, hearings are likely to be rushed or delayed. Children and families suffer.

Of particular relevance to this legislation, the Commission determined that local court practices should facilitate the attendance of children, parents, and caregivers in hearings. To that end, the Commission recommends, in draft, that, among other things:

- Hearings be available at times that do not conflict with school or work or other requirements of a family’s case plan;

- Hearings be timely and meet all federal and state mandated timelines. Continuances should be minimized and the reasons for systemic continuances should be addressed by the local court and child welfare agency;
- All participants leave court hearings with a clear understanding of what happened there, why decisions were made, and if appropriate, what actions they need to take; and
- The AOC provide judicial officers and court participants with education and support to create courtroom environments that promote communication with, and participation of, all parties, including children, that takes into account age, development, language, and cultural issues.

(California Blue Ribbon Commission on Children in Foster Care, Draft Recommendations: The Role of the Courts in Improving the Lives of Children and Families (March 2008).)

Given that this bill seeks to ensure that children who want to participate in their dependency hearings are able to do so, it advances the Commission's draft recommendations to facilitate children's attendance at, and meaningful participation in, their hearings.

While this bill does not address all issues surrounding court attendance, it goes a long way toward helping make the court process accessible for foster children. The bill helps ensure that children who want to participate in their dependency hearings are able to do so, but it does not address all issues that may make participation difficult. This includes a legislatively established transportation mandate, although the bill does provide that a court may issue any orders necessary to ensure that the child has an opportunity to be present. Additionally, the hearing will be far more meaningful if children are prepared for the hearing, including understanding what to expect and how best to participate. The child's attorney is best suited for explaining the court process to the child.

ARGUMENTS IN SUPPORT: In support of the bill, the Children's Law Center of Los Angeles writes that youth experience significant frustration and anxiety when they are not given an opportunity to participate in the proceedings. Judges and attorneys also report that if the child does not participate, they have a hard time getting a true picture about the child's life:

It has been our experience that when children and youth are able to attend their hearings the benefits to the child and to the court process are numerous. When children and youth are present in court they ask questions, engage in discussion with the judge, and leave understanding why certain decisions have been made. . .

Similarly, judges can learn a great deal from having even the youngest children present in the courtroom. Observing the child's interactions with other family members, hearing in the child's own words about their situation, current placement, school environment, needs and wants, and hopes and dreams gives the hearing officer a much more broad and deep understanding of how to best proceed on the child's behalf.

Agrees the Youth Law Center:

Participation in court proceedings allows youth to have a say in the decisions that affect their lives, helps them to understand the process, and provides essential information for the court. Actively involving youth in court decisions improves

the decision making process and increases the likelihood that those decisions will be carried out. . . While this bill will have a positive effect on all children in the foster care system, it will be particularly important for older youth who all too often leave foster care for an uncertain future without adequate preparation or support.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Law Center of Los Angeles
Youth Law Center
Many individuals

Opposition

None on file

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